STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-725

September 7, 1999

PUBLIC UTILITIES COMMISSION
Rulemaking: Selection of Preferred
Telecommunications Carriers and the
Imposition of Preferred Carrier Freezes
(Chapter 296)

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; Diamond and NUGENT, Commissioners

I. INTRODUCTION

In this Order, we adopt a final rule that prohibits telecommunications carriers from changing a customer's preferred carrier without first receiving the customer's authorization. This practice is commonly referred to as "slamming." The rule requires new telecommunications carriers to whom service is being switched to verify the customer's authorization to change carriers, prescribes methods for such authorization, and prescribes penalties for carriers that violate the rule. The rule also establishes requirements for imposing and lifting preferred carrier freezes.

II. BACKGROUND

Title 35-A, M.R.S.A., section 7106 requires the Commission to adopt nondiscriminatory and competitively neutral rules to address the problem of slamming. The Commission previously drafted and released a slamming rule for comment on September 25, 1998. A public hearing was held on October 30, 1998, and written comments on the draft rule were accepted until November 13, 1998. During this same time period, the Federal Communications Commission (FCC) was drafting its own slamming rule. Prior to our rule being finalized, the FCC adopted its rule on December 17, 1998.¹

Title 35-A M.R.S.A. section 7106(3)(A) requires that any rules adopted by the Commission be consistent with the rules adopted by the Federal Communications

In the Matter of Implementation of the Subscriber Selection Changes Provisions of the Telecommunications Act of 1996, Second Report and Order and Further Notice of Proposed Rulemaking, Docket No. 94-129 (F.C.C. Dec. 17, 1998). On May 18, 1999, the DC Circuit Court of Appeals issued an order staying the liability portion of the FCC's rules. The Maine Commission has determined that it will implement this rule as drafted and, to the extent the FCC's rule is modified at a later date, such modifications will be incorporated into this Rule pursuant to Section 6. If a major revision is necessary, we will initiate a rulemaking at that time.

Commission. For this reason, we revised our proposed rule to be consistent with the FCC rule and released the revised rule for comment on March 26, 1999.

In developing our final rule, we were guided by the FCC rule on slamming, as well as by the specific statutory provisions contained in 35-A M.R.S.A. § 7106. Because our rules must be consistent with the FCC's rules, we have not fully restated the FCC's rationale for adopting the proposed rule.²

Pursuant to 35-A M.R.S.A. § 7106(3), the rule established in this proceeding is a routine technical rule as defined in Title 5, chapter 375, subchapter II-A.

III. DISCUSSION OF INDIVIDUAL SECTIONS

In this section of the Order, we discuss the individual sections of the final rule, the positions of commenters, and our rationale for maintaining or modifying the provisions of the proposed rule.

A. <u>Section 1: General Provisions and Definitions</u>

Section 1(A) states the general scope of the rule. The rule applies to entities selling telecommunications services in the State of Maine, i.e. local exchange carriers, interexchange carriers, and resellers of both services.

Section 1(B) contains definitions of terms used throughout the rule. The definitions "initiation of a change of carrier," "non-executing carrier," and "preferred carrier freeze" were added to the rule. We do not provide an explanation for each definition because the definitions are generally self-explanatory.

Definitions that require some explanation are non-executing carrier, submitting carrier, and executing carrier. A "non-executing carrier" is an executing carrier that is providing the telecommunications service that is subject to an authorized change who fails to execute the authorized change. This definition was created to differentiate between an executing carrier that is providing the service subject to the authorized change and an executing carrier that is not providing the service subject to the authorized change.

A "submitting carrier" is any carrier that: 1) requests on behalf of a customer that the customer's telecommunication's carrier be changed; and 2) seeks to provide retail services to the end-user customer. A carrier may be treated as a "submitting carrier" if it is responsible for any unnecessary delays in the submission of carrier changes or for the submission of unauthorized carrier changes. An "executing carrier" is any carrier that gives effect to, i.e. performs the physical operations needed to accomplish, a request that a customer's carrier be changed. A carrier may be treated as an executing carrier if it is

See the FCC's December 17, 1998, Second Report and Order for detailed explanation of the FCC's rationale.

responsible for any unnecessary delays in the execution of carrier changes or for the execution of unauthorized carrier changes.

The definition of a submitting carrier accounts for the shifting of roles that occurs when either a facilities-based local exchange carrier (LEC) or interexchange carrier (IXC) sells service to a switchless reseller, and the reseller in turn sells service to an enduser. This definition assigns responsibility for a preferred carrier change to the reseller, rather than its underlying facilities-based carrier. Either the reseller or the facilities-based carrier, however, may be treated as a "submitting carrier" if it is responsible for unreasonable delays in the submission of carrier change requests or if it is responsible for submitting unauthorized carrier change requests.

An "executing carrier" is the carrier which has actual physical responsibility for making a preferred carrier change. In situations where a competitive local exchange carrier (CLEC) reseller is forwarding a carrier change request on behalf of a subscriber to the underlying facilities-based LEC, the facilities-based LEC is responsible for the carrier change. However, either the reseller or the facilities-based carrier may be treated as an "executing carrier" if it is responsible for unreasonable delays in the execution of carrier change requests or for the execution of unauthorized carrier changes.

The rule defines "customer" as any person who has agreed to receive, been accepted, and is receiving telecommunication service or has agreed to be billed for the same, including that person's spouse or legal guardian. AT&T commented that the proposed rule failed to adequately define the term "customer" because it did not reflect the fact that people other than those specified in the rule may be authorized to initiate a carrier change. We disagree with AT&T's position and believe that authorizations for carrier changes should be limited to the individuals described above. If the definition of "customer" were expanded, carriers could accept the authorization of any person who claims to be authorized to initiate a carrier change, regardless of whether the person is actually authorized by the customer of record to initiate a carrier change (e.g. children, visitors, janitors, etc).

Title 35-A M.R.S.A. section 7106(3)(C) requires the Commission to define actions that constitute the "initiation of a change of carrier" and actions that "do not constitute the initiation of a change of carrier" to clarify where the burden of documenting the customer's desire for a carrier change resides (i.e. with the customer's local exchange carrier that effectuates the carrier change or with the new telecommunications carrier who requests the carrier change). The definitions of a "submitting carrier" and of an "executing carrier" clearly establish responsibility for submitting and executing carrier changes, therefore, we define "initiation of a change of carrier" by reference to these definitions.

B. Section 2: Freeze of Customers' Preferred Carrier

Section 2 requires all telecommunications carriers that offer preferred carrier freezes to offer freezes on a nondiscriminatory basis to all customers, to provide separate and discrete freezes on each telecommunications service provided, and to verify customer requests to impose and lift such freezes.

We believe that it is in the customer's best interest to be able to freeze his or her preferred carrier selection to ensure that the selection is not changed unless the customer so desires. We also believe it is in the customer's best interest to be able to freeze individual telecommunication services. Allowing a customer to freeze individual services increases customer control and eliminates "account-level" freezes that can be anti-competitive in nature.

Section 2(A) requires that preferred carrier freezes be offered to all customers in a nondiscriminatory manner. Carrier freezes offer consumers an additional and beneficial level of protection against slamming, but they also create the potential for unreasonable and anti-competitive behavior that may impede competition. Facilities-based LECs, most of which are incumbent LECs, are uniquely situated to administer preferred carrier freezes. Thus, other carriers that may be competing directly with the incumbent LECs must rely on the LEC to offer preferred carrier freezes to their customers. To ensure that freezes are administered in an equitable and competitively-neutral manner, we require that freezes be offered in a non-discriminatory manner to customers, regardless of the customer's preferred carrier selection.

AT&T commented that preferred carrier freezes "should only be employed in markets which are competitive so that all carriers can affirmatively market the protection to their customers and no carrier can use the preferred carrier freeze as an anti-competitive tool to prevent the growth of competition." AT&T also commented that the marketing of preferred carrier freezes should be prohibited until Bell Atlantic receives authority to offer interLATA toll in Maine. We disagree with AT&T. The additional protection against slamming afforded to customers through preferred carrier freezes outweighs the potential use of freezes for anti-competitive purposes by incumbent LECs. Further, to ameliorate the potential use of preferred carrier freezes for anti-competitive purposes, section 2(A) requires preferred carrier freezes be offered to all customers in a nondiscriminatory manner. In addition, the rule is consistent with the FCC's rule.

AT&T also commented that the proposed rule is unfair because it permits LECs, but not IXCs, to obtain authorizations to freeze/unfreeze preferred carrier selections using third-party verification. AT&T argues that the proposed rule does not provide a neutral method for placing or lifting preferred carrier freeze orders because the LEC can interfere in the three-way call process. We disagree with AT&T. The implementation and lifting of a preferred carrier freeze order is accomplished by equipment controlled by the LEC. For this reason, the LEC must be included in the process both to implement and lift a preferred carrier freeze. In addition, customers implement a preferred carrier freeze for

added protection against slamming. If this rule allowed submitting carriers to lift and implement preferred carrier freezes without verification by the LEC, its entire purpose would be defeated.

Section 2(B) requires carriers offering freezes to obtain separate verifications for each service being frozen (e.g. local exchange service, intraLATA toll service, interstate toll service, etc.). This will increase customer choice in a competitive marketplace by allowing customers to establish preferred carrier freezes only on those services they choose to freeze. For instance, a customer may elect to freeze his or her selection for intraLATA toll, while retaining the option to change his or her interstate toll carrier. This will also prevent carriers from placing freezes on all of the customer's services when the customer only intended to authorize a freeze on a particular service.

We have modified the language of section 2(B) from the proposed rule to clarify that this section prohibits the bundling of carrier freezes, but does not mandate that each carrier must offer a freeze for each type of carrier service (i.e. local, intraLATA, interLATA, or international toll). This modification was incorporated to be consistent with the FCC's rules and to accommodate technical limitations of some carriers. Bell Atlantic commented that it does not have the capability to freeze a customer's choice for local exchange service, and that the FCC's rules do not require carriers to offer a freeze option on all categories of service.

Section 2(C) establishes standards for the solicitation of preferred carrier freezes. It is important for customers to fully understand the nature of the carrier freeze, including how to lift a freeze if desired. It is also important for customers to fully understand the nature of the preferred carrier freeze to prevent anti-competitive use of freezes by carriers. We therefore require any carrier-provided information regarding preferred carrier freezes to be neutral, clear and not misleading. This should reduce customer confusion regarding the imposition of preferred carrier freezes and reduce instances of fraud by making customers aware of the services to which the carrier freeze applies before the customer acts to impose such a freeze.

Section 2(D) requires that carrier-change verification procedures be used to verify a customer's desire to impose a preferred carrier freeze. Requiring facilities-based LECs that administer preferred carrier freezes to verify a customer's request to place a freeze will reduce customer confusion regarding preferred carrier freezes and prevent fraud in their implementation. This will also minimize the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of customers.

We eliminated section 2(D)(4) based on comments by Bell Atlantic and Sprint that this subsection was redundant with section 2(D)(1) and that it was unclear whether or not the sentence subsequent to section 2(D)(4) was meant to modify the entire section or only section 2(D)(4). Section 2(D)(4) provided customers the right to impose a preferred carrier freeze by providing the LEC with a written request. Bell Atlantic and Sprint argued that this was redundant (and inconsistent) with section 2(A)(1), which

requires written requests to impose a preferred carrier freeze to comply with the same requirements as a Letter of Agency (LOA). By eliminating section 2(D)(4), the redundancy with section 2(D)(1) and the confusion with section 2(D)(4), as described above, are eliminated without changing the intent of the section. In addition, this modification makes the rule consistent with the FCC's rule.

Section 2(E) requires carriers effectuating preferred carrier freezes to verify a customer's desire to lift a preferred carrier freeze. As previously stated, it is important for customers to be able to freeze their preferred carrier selection to ensure that the selection is not changed unless the customer so desires. However, it is also important for customers to be able to easily remove the preferred carrier freeze to take advantage of competitive local exchange and interexchange markets. Because the facilities-based LEC controls the preferred carrier freeze, it bears the responsibility for documenting a customer's desire to lift a preferred carrier freeze.

We eliminated the requirement in section 2(E)(2) that a telephonic request initiated by the customer to lift a preferred carrier freeze come from the telephone line subject to the freeze. This revision was based on comments by Bell Atlantic that customer-initiated telephonic requests under section 2(E)(2) must comply with the same safeguards as section 2(E)(1) applicable to three-way calls (which do not require the customer to be on the same line which the freeze deactivation applies), therefore, there is no need for the customer request to come from the affected telephone line.

C. Section 3: <u>Changing a Primary Interexchange or</u> Local Exchange Carrier

Section 3(A) prohibits submitting carriers from initiating a change in a customer's preferred carrier without obtaining authorization for the change from the customer pursuant to section 3(B) of the rule.

Section 3(B) prohibits a submitting carrier from submitting a preferred carrier change request to a LEC unless the request is verified through an LOA, an electronic authorization placed from the telephone number(s) on which the preferred carrier selection is to be changed, an independent third party, or other FCC approved method. The verification methods established in this subsection mirror the verification methods contained in 35-A M.R.S.A. § 7106(1)(A).

Section 3(B)(4), the provision to incorporate any future verification methods that may be approved by the FCC, has been eliminated and the text added to the general directive contained in section 3(B). This revision was recommended by Bell Atlantic to group the approved verification methods together in one location as described in the preceding paragraph.

We have added language to section 3(B)(1)(a)(i), at the recommendation of Sprint and AT&T, to allow letters of agency (LOA's) to be a separate or separable

document. This revision makes our rule consistent with the FCC and allows carriers to include information regarding the service they are offering within the same document, though separated from, the authorizing language. This will also allow carriers to include LOA's as a perforated attachment to documents describing the particular plan or service the customer is subscribing.

We revised section 3(B)(1)(b)(vi) to eliminate the requirement that LOA's specify the amount of any charge to change carriers. The revised section requires carriers to confirm that a charge may be assessed to change carriers, but does not require carriers to specify the amount of the charge. AT&T and Bell Atlantic commented that the FCC rule does not require that customers be provided with the specific charge to change carriers and pointed out that submitting carriers are often not aware of what the specific charge may be because it is assessed by the local exchange carrier.

We eliminated section 3(B)(1)(b)(viii) that required LOA's to "confirm that if the customer does not sign and return the LOA, the current carrier will be retained." AT&T commented that the existing language of the LOA makes it evident that if the customer takes no action to change the current carrier, the current carrier will be retained. We agree and find that the elimination of section 3(B)(1)(b)(viii) simplifies the LOA while not adversely affecting it.

We eliminated the requirement in section 3(B)(3)(b) that the independent third party verification company provide customers with the telephone number[s] necessary to verify whether or not a carrier change occurred. AT&T and Sprint commented that it should not be the responsibility of the third party verifier to provide a telephone number to customers to confirm a carrier change. AT&T also noted that the third party verification process itself is a confirmation of the change in carriers and providing a telephone number to ensure that the change occurred is a needless, additional step in the process. We agree with AT&T and Sprint and find that the elimination of this requirement simplifies the third party verification process and does not adversely affect the purpose of this section.

Section 3(C) specifies that executing carriers shall not verify carrier changes prior to executing the change. It would be burdensome, unnecessary, and duplicative for executing carriers to verify preferred carrier changes. In addition, in situations where the carrier change results in a customer leaving the executing carrier for a competitive carrier, an incentive exists for the executing carrier to reject the carrier change authorization. To prevent anti-competitive behavior, this rule prohibits executing carriers from verifying carrier changes. Although executing carriers do not have verification responsibilities under this rule, they do have a responsibility to ensure that carrier changes are executed promptly and without unreasonable delay.

We added language to section 3(C) to clarify the responsibility of local exchange carriers in the carrier change process. This was accomplished by removing the term "verified" in the last sentence of section 3(C) and replacing it with "submitted to the executing carrier." This revision was recommended by the Telephone Association of

Maine (TAM) and clarifies that local exchange carriers are not responsible for verifying carrier change orders submitted to them by the submitting carriers.

Section 3(D) requires all changes to a customer's preferred carrier for local exchange, intraLATA toll, and interLATA toll services be authorized by the customer for each type of service and separately verified in accordance with our procedures. This will allow customers to change only those services they want to change and will prevent carriers from taking advantage of customer confusion and changing all the preferred carriers when the customer merely intended to change one.

Section 3(E) requires submitting carriers to document a customer's preferred carrier selection change request made over the telephone pursuant to one of the methods required for carrier-initiated preferred carrier selection changes. Title 35-A M.R.S.A. section 7106(3)(B) requires the Commission to consider whether customer verification is necessary in the case of customer-initiated calls. This rule reflects our belief that customer verification is necessary to prevent slamming in those instances where a carrier initiates an unauthorized change and simply claims that the customer requested the change over the phone.

D. Section 4: <u>Liability and Reimbursement Procedures for Failure to Execute an Authorized Change</u>

This section was added to the rule to clarify the liability of an executing carrier that fails to execute a preferred carrier change request put forth by a submitting carrier. Section 4 of the proposed rule stated that "...an executing carrier that fails to execute an authorized change shall be liable to the authorized carrier in an amount equal to charges paid to the unauthorized telecommunications carrier by such customer after such violation, as well as for additional amounts as prescribed in section 5 of this rule." The proposed rule, however, did not specify the process for forwarding moneys collected by an executing carrier to an authorized carrier in situations where an authorized change request was not executed. Section 4 now provides a process for transferring moneys between an executing carrier who fails to execute an authorized change (non-executing carrier), an authorized carrier (the carrier who submitted the authorized change), and the customer.

Section 4 also limits the liability of executing carriers that fail to execute authorized changes to executing carriers who are providing the telecommunications service (either directly or through an affiliate) that is subject to the authorized change. This is because an executing carrier that is providing the service that is subject to an authorized change has a financial incentive to retain the customer and not execute the authorized change request. An executing carrier that is not providing the service that is subject to an authorized change has no such incentive. In addition, only an executing carrier that is providing the service that is subject to an authorized change would collect charges from a customer (that should have been collected by the authorized carrier had the authorized change been executed) and be in a position to forward such charges to the authorized carrier.

Section 4(C) provides non-executing carriers the right to dispute the existence of an authorized change request within 30 days of its notification by an authorized carrier or customer that the authorized change was not executed. The authorized carrier must, within 30 days of its receipt of notification of a dispute, provide proof of an authorized change request and the date that such request was submitted to the alleged non-executing carrier. Upon receipt of such proof, the non-executing carrier must comply with section 4 of the rule.

E. Section 5: <u>Liability and Reimbursement Procedures for an</u> Unauthorized Change

The purpose of this section is to ensure that customers do not pay or incur any additional costs as a result of being slammed, and that the carriers involved do not benefit financially from a slamming incident. The section assigns liability for unauthorized changes in a customer's preferred carrier selection and establishes the procedures that unauthorized carriers must follow in reimbursing authorized carriers and customers.

Sections 5(A) & (B) assign liability for unauthorized changes in a customer's preferred carrier selection. Submitting carriers who initiate an unauthorized change are liable to the authorized carrier in an amount equal to charges paid to the unauthorized carrier by the customer. The unauthorized carrier is also liable to the customer for any costs the customer incurs to return to the authorized carrier. Customers who do not pay charges to an unauthorized carrier are absolved of liability for charges assessed by the unauthorized carrier for the first 30 days after the slam occurred. After the 30-day absolution period, customers are liable to the authorized carrier for charges they would have incurred if they had remained with the authorized carrier. Customers who pay charges to an unauthorized carrier are liable only for the charges they would have paid their authorized carrier absent the unauthorized change.

The Commission modified section 4(B)(1)(b) of the proposed rule to afford authorized carriers the option of re-rating charges incurred beyond the 30-day absolution period or absolving charges for calls made after the 30-day absolution period. Bell Atlantic commented that the cost of re-rating the calls and billing the customer may exceed the amount receivable from the customer. In these situations, the authorized carrier should be afforded the option of waiving the entire bill. We agree with Bell Atlantic and feel that both the customer and the authorized carrier will benefit from this change.

Section 5(C) establishes the procedures that unauthorized carriers must follow in reimbursing authorized carriers and customers. For instances where the customer has not paid charges to an unauthorized carrier, this section requires an unauthorized carrier to remove from the customer's bill all charges that were incurred for the first 30 days after the unauthorized change occurred. The alleged unauthorized carrier shall, at the request of the authorized carrier (i.e. the carrier to which the customer was presubscribed immediately prior to the allegedly unauthorized change), submit proof of

verification of the disputed carrier change, billing records, and a claim for the amount of the charges absolved (if the unauthorized carrier decides to challenge the slamming accusation). This will allow the alleged unauthorized carrier the opportunity to refute the slamming accusation and provide evidence to document a proper change of carrier.

The authorized carrier shall conduct a reasonable and neutral investigation of the claim and issue a decision to the alleged unauthorized carrier and customer within 60 days after the receipt of the claim. If the authorized carrier decides that the customer did authorize the carrier change, it shall place on the customer's bill a charge equal to the amount of charges from which the customer had previously been absolved, and forward that amount to the alleged unauthorized carrier. If the authorized carrier determines that the customer was slammed, the customer shall not be required to make any payments for charges for which he or she was previously absolved.

When the customer has paid charges to the unauthorized carrier, the unauthorized carrier shall provide the originally authorized carrier proof of verification for the carrier change. In the absence of such proof, the unauthorized carrier must provide to the authorized carrier an amount equal to all charges paid by the customer, an amount equal to all charges to return the customer to his or her authorized carrier, and copies of any telephone bills issued to the customer. Upon receipt of these funds by the authorized carrier, the authorized carrier shall refund to the customer all charges paid in excess of what the authorized carrier would have charged the customer, absent the unauthorized change. In situations where the unauthorized carrier fails to provide proof of verification and fails to forward charges paid by the customer to the authorized carrier, the authorized carrier is not required to reimburse the customer.

The reason the FCC absolves customers who have not paid charges to the unauthorized carrier, but does not absolve from liability customers who have paid charges to the unauthorized carrier, is that section 258(b) of the federal Telecommunications Act of 1996 (TelAct) requires unauthorized carriers to give authorized carriers all charges collected from slammed customers. The TelAct did not address whether customers must pay unpaid charges assessed by an unauthorized carrier to the properly authorized carrier, or whether charges collected from the unauthorized carrier should be returned to the customer who was slammed. The FCC believes that this policy strikes a balance between the interests of consumers and compliance with the TelAct,³ and we are bound by Maine law to follow the FCC's approach.⁴

In the Matter of Implementation of the Subscriber Selection Changes Provisions of the Telecommunications Act of 1996, Second Report and Order and Further Notice of Proposed Rulemaking, Docket No. 94-129 (F.C.C. Dec. 17, 1998).

We believe it would be fairer if all customers who are slammed were absolved of liability for at least 30 days after the occurrence of the unauthorized change. However, absolving customers who have paid charges to the unauthorized carrier would be inconsistent with the FCC rule, and is therefore prohibited by Title 35-A, section 7106 (3)(A).

Title 35-A M.R.S.A. section 7106(3)(D) states that if the FCC provides by rule that customers are not responsible to any carrier (authorized or unauthorized) for usage during the period the customer was served by the unauthorized interstate carrier, the Commission may promulgate a similar rule for local and intrastate carriers. The FCC rule adopted on December 17, 1998, absolves customers of liability for unpaid charges assessed by unauthorized carriers for 30 days after an unauthorized change has occurred. If a customer pays charges to an unauthorized carrier, however, the customer's liability will be limited to the amount he or she would have paid the authorized carrier. Our final rule is consistent with the FCC's approach.

Section 5(C) also requires the authorized carrier to reinstate the customer in any premium program in which the customer was enrolled prior to the unauthorized change, if that customer's participation in the premium program was terminated because of the unauthorized change. The authorized carrier shall also provide or restore any premiums to customers who have paid charges to the unauthorized carrier if the customers would have been entitled to the premiums had the unauthorized change not occurred. The authorized carrier must comply with this requirement regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the customer.

We have modified section 6 (A)(4) of the proposed rule (section 5(C)(1)(d) of this rule) to require LECs to notify the authorized carrier, or refer the customer to the authorized carrier, when a customer notifies the LEC of an unauthorized carrier change. TAM commented that the proposed rule was unclear regarding the responsibilities of a LEC in situations where a customer contacts the LEC, rather than the authorized carrier, to report an unauthorized carrier change. This modification clarifies the responsibilities of a LEC and ensures that in cases in which the customer contacts his or her LEC to report an unauthorized carrier change, the authorized carrier is promptly notified of the unauthorized carrier change.

Sprint recommended that section 5(A)(6) of the proposed rule (section 5(C)(1)(f) of this rule) be modified to ensure consistency with the FCC's rule, ⁵ which requires the restoration of premiums only for customers who have paid the unauthorized carrier. Specifically, Sprint recommended that the Commission add language to section 5(A)(6) of the proposed rule clarifying that premiums will be restored only to customers who have already paid the unauthorized carrier. The Commission finds this change unnecessary by virtue of the fact that section 5 (C)(1) applies only to customers who have paid charges to the unauthorized carrier. All subsections of section 5(C)(1), including 5(C)(1)(f), apply specifically to customers who have already paid charges to the unauthorized carrier. For this reason, we decline to modify the language of the proposed rule.

F. Section 6: <u>Consistency with Federal Communications Commission</u>

^{5&}lt;sup>5</sup> 47 C.F.R. § 64.1170(e)

Rule

Title 35-A M.R.S.A. section 7106(3)(A) requires that rules adopted by the Commission be consistent with rules adopted by the FCC, except that the Commission's rules on customer verification need not include the customer information package as defined in 47 Code of Federal Regulations, Section 64.1100(d). To ensure that our rule will be consistent with any revisions the FCC may incorporate, section 6 states "in the event the FCC promulgates a rule that is inconsistent with any provision of this rule, we will review the FCC's rule and initiate a rulemaking to amend this rule if necessary."

We modified section 6 of the proposed rule to allow for the use of an independent third party administrator by carriers to oversee the liability portion of this rule, provided that the FCC waives the liability portion of its rules for those carriers. In its December 17, 1998 order adopting slamming rules, the FCC provided for the waiver of the liability portions of its rules for carriers who participate in an industry-funded independent dispute resolution process. Sprint recommended that the Commission modify section 6 to also allow for the use of an independent third party administrator to be consistent with the FCC rules on slamming.

G. Section 7: Penalty

Section 8 provides that the Commission may impose an administrative penalty against any person, corporation, or entity that violates this rule and establishes maximum penalty amounts and guidelines for determining penalty amounts.

We modified section 8(A) of the proposed rule by adding language that takes into consideration the carrier's intent in committing a violation before imposing an administrative penalty. AT&T pointed out that section 7106(2) provides that the Commission "in determining whether to impose a penalty, may consider whether the violation was intentional" but the proposed rule only considers the intent of the violator with respect to the amount of the penalty assessed. We agree with AT&T and modify section 8(A) that makes the rule consistent with the 35-A M.R.S.A. § 7106(2).

H. Section 8: Waiver or Exemption

Section 9 contains the Commission's standard language for a waiver or exemption from the provisions of this chapter that is not consistent with its purpose or those of Title 35-A.

Accordingly, we

ORDER

1. The attached Chapter 296, Selection of Primary Interexchange and Local Exchange Carriers, is hereby adopted;

- 2. That the Administrative Director shall send copies of this Order and attached rule to:
- a. All telecommunications carriers certified to operate in the State of Maine;
- b. All persons who have filed with the Commission within the past year a written request for copies of all Notices of Rulemaking;
 - c. The Office of the Public Advocate;
- d. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
- e. The Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).
- 3. That the Public Information Coordinator shall post a copy of this Order and rule on the Commission's World Wide Web page (http://www.state.me.us/mpuc/).

Dated at Augusta, Maine this 7th day of September, 1999.

BY ORD	ER OF THE C	OMMISSION
Dennis L	Keschl	
Administ	trative Director	r

COMMISSIONERS VOTING FOR: Welch

Nugent

Diamond